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SUMMARY RECORD OF THE 1336th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 14 July 1994, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Azerbaijan (CCPR/C/81/Add.2; HRI/CORE/1/41/Rev.1) (continued)

1. At the invitation of the Chairman, Mr. Gadjiyev, Mrs. Eivazova, Mr. Chalakov and Mr. Zaver (Azerbaijani Republic) took places at the Committee table.

2. The CHAIRMAN invited the delegation of Azerbaijan to answer the oral questions asked by members of the Committee.

3. Mr. GADJIYEV (Azerbaijan) thanked the members of the Committee for their useful comments. He was also grateful to them for their understanding of the considerable difficulties confronting his country. If, as some thought, history repeated itself, it was to be hoped that Azerbaijan would not relive the tragic times it was experiencing at present. Like any country resulting from a totalitarian regime, that young State was called upon to solve very complex economic, legal and even psychological problems. It must create new laws and new organs, and some existing institutions were reluctant to accept change that might result in a reduction of their powers. Among the objectives to be attained, reference might be made to the expansion of the role of the courts, the absolute primacy of the law and the increased participation of citizens in public life. The Committee would agree that such changes could not be brought about in a year and that the best course was gradual reform. Rushing matters might place the country in an even more serious situation, since it would be very dangerous to dismantle an old regime without having established and consolidated the new regime. Moreover, the reform would have to be very far-reaching, and its cost was high for a country which had already had to bear the cost of a substantial war effort. It would, in particular, have to train senior staff for all institutions. For the time being, the war was having a serious effect on those institutions; for example, a place had to be found for all refugees and, in addition, the courts were inundated with complaints arising from the illegal occupation of apartments by refugees. In any event, the Committee could rest assured that the legislative work would continue in the light of its observations.

4. On the question of the death penalty, it should be borne in mind that it could be pronounced only on an exceptional basis, in the case of crimes against the State and intentional homicide accompanied by aggravating circumstances. One of the cases cited by a member of the Committee had concerned the persons who had perpetrated a bomb attack against a bus which had caused many casualties, at a time when Azerbaijan had still been a Soviet republic. The persons responsible for the attack had been found guilty of murder and sentenced to death. Since independence, no executions had taken place and the number of death sentences pronounced had diminished.

5. As to plans to abolish the death penalty, he reaffirmed that he personally opposed that form of punishment. However, unanimity on the subject

was a long way off and jurists stated that society was not prepared to take such a step. The fact remained that the growing practice of the courts was not to impose the death penalty.

6. The right to appeal against a death sentence had given rise to a number of questions, in particular in connection with the fact that the Supreme Court was competent to try defendants at first instance. Generally speaking, the Code of Criminal Procedure guaranteed the right to appeal against any conviction to a higher court. When the death penalty had been pronounced at first instance by the Supreme Court, the possibility of a mercy petition existed; such a petition was heard by the Supreme Court, which could decide to refer the case to another court, as had happened in 1984. It was also possible to address a mercy petition directly to the President of the Republic. The petition was examined by a special commission, presided over by the Head of State; the Commission rendered its decision at final instance.

7. Taking hostages was not an Azerbaijani practice. What the Committee had in mind was the case of Armenian fighters who committed serious offences on Azerbaijani territory, killing citizens and spreading terror; when they were captured, they were held not as hostages but as prisoners of war.

8. With regard to torture and ill-treatment, there was probably a misunderstanding since the Government had received no reports of ill-treatment. No official inquiry body had established the existence of cases of torture. In fact, torture and ill-treatment were prohibited by law, and article 441 of the Code of Criminal Procedure forbade prison personnel to ill-treat detainees.

9. On the question of freedom of expression, it was true that the existence of opposition newspapers was a very good thing for society. In Azerbaijan, 500 newspapers and periodicals were published, and 90 per cent of them were independent, which testified to the Government's commitment to the principle of freedom of the press. It was possible, however, that for war-related reasons some isolated restrictions might have been imposed on that freedom.

10. Freedom of movement was guaranteed by law and in practice. Any person over the age of 18 could obtain a passport and travel to the country of his choice. The old Soviet system of internal passports had been abolished and replaced by the issuing of identity cards. The Soviet "propiska" system (residence permits) had also been done away with.

11. As to the place of international instruments in domestic law, it should be borne in mind that the Azerbaijani Republic had ratified a large number of such instruments, which were listed in paragraph 31 of the core document (HRI/CORE/1/Add.1/Rev.1), and that it was studying the possibility of ratifying others. Whenever Parliament decided to ratify an instrument, it stressed that it was essential to harmonize domestic legislation in the light of that instrument. Thus when, in July 1992, it had decided to accede to the International Covenant on Civil and Political Rights, it had at the same time requested the various State institutions to ensure that legislation was fully in keeping with the Covenant.

12. Freedom of religion was fully respected in Azerbaijan. In 1992, a new law had been enacted on the subject; article 31 of that law provided that, if an international instrument ratified by the Republic comprised provisions differing from domestic legislation, it was the provision of the international instrument that must be applied. In fact, in the event of incompatibility, article 18 of the Covenant would be applied.

13. Freedom of assembly was guaranteed by the Constitution and was subject to no restriction other than the limits imposed by the need to ensure public order. In the case of public demonstrations, therefore, the local authorities' approval of the venue and/or route was essential.

14. On the question of the formation of political parties, it should be pointed out that the Political Parties Act guaranteed the possibility of forming a party provided that its aim was not secession, jeopardizing State security, incitement to racial hatred or jeopardizing the structure of the State. The constitution of a political party was subject to registration with the Ministry of Justice and a refusal by the Ministry was appealable. It was the Constitutional Court that would hear such appeals and, until such time as that Court had been established, the Supreme Court assumed competence for that matter. It had in fact handed down a decision ordering the Ministry of Justice to rescind its refusal to register a political party.

15. On the question of hostages, he wished to make it clear that for a year all the Azerbaijani armed forces stationed on the territory that lay at the heart of the conflict with Armenia had been subordinate to the Ministry of Defence and, as such, were subject to regulations which prohibited the taking of hostages. A question had been asked about Armenian civilians who had allegedly been executed by elements of the Azerbaijani armed forces. He pointed out that the country was at war and that war followed a logic of its own. It caused victims on both sides, and one could only hope that it would end as soon as possible. The Azerbaijani authorities, for their part, had constantly stated that they had been in favour of a political settlement of the conflict over Nagorny Karabakh. The Azerbaijanis had lived for decades on good terms with their Armenian neighbours and so there were grounds for hope.

16. Another question had been asked in connection with article 10 of the Covenant concerning the corrective labour settlements. He drew attention to the applicable provisions of criminal legislation in that respect: the regime of custodial penalties took account of the seriousness of the offence committed. In the case of a first offender sentenced for a minor offence, the penalty could be served in an ordinary-regime settlement. If the offence was categorized as serious, the sentence was served in a settlement with a stricter regime. Persons who received a custodial sentence for the second time were placed in a severe-regime settlement. There was also a prison establishment, known in Russian simply as "prison", in which a special detention regime was enforced. In the past Azerbaijan had had only one establishment of that type, situated in a town in Nagorny Karabakh. Since that town had fallen into the hands of the Armenian occupation forces, there was no longer any "prison" in Azerbaijan. Similarly, there were no special-regime settlements, reserved for particularly dangerous repeat offenders. Following the reform of the Penal Code, the special-regime corrective labour camps and the very concept of a "particularly dangerous

repeat offender" should disappear. In accordance with article 20 of the Penal Code, the purpose of punishment was to reform and rehabilitate the convicted prisoner. Legislation also provided for measures aimed at the social reintegration of prisoners. Generally speaking, the new criminal legislation, the drafting of which was encountering certain difficulties due to the current situation, would be based on more democratic principles than that currently in force.

17. In reply to a question about State secrecy, he said that there was at present no law on State secrecy in Azerbaijan; that concept consequently did not appear in legal enactments. However, certain ministerial instructions might be contrary to legislation, in which case they should be rescinded as a matter of urgency.

18. Replying to various questions concerning article 14 of the Covenant, he said that the Attorney General performed the function of prosecutor. It must be acknowledged that at present the powers of the Government Procurator's Office were too wide. The concept of "public prosecutor" dated from Soviet times and had unfortunately not yet been eliminated from legislation. That should nevertheless be done.

19. The right of defence was guaranteed by the Codes of Criminal and Civil Procedure. The language used for judicial procedure was Azerbaijani or the language of the majority of the population of the area concerned. Parties to the trial who did not have a command of the language used by the court were entitled to have full access to written evidence and to participate in the hearing through an interpreter. Interpreters were informed of their responsibility if it was established that their interpretation was erroneous. In such cases the verdict was quashed on the grounds that the right of defence had been infringed. Generally speaking, the Code of Criminal Procedure provided that violation of the right of defence constituted a punishable offence. The presence of a lawyer was obligatory if the defendant did not speak the language used by the court. In the case of a group of two or more defendants, one of them at least must be defended by a lawyer. If a defendant could not afford to retain the services of a defence counsel, the court appointed a counsel ex officio.

20. In accordance with the Codes of Criminal and Civil Procedure, the defence counsel could, inter alia, furnish evidence and summon further witnesses. If the court rejected his request, the rejection must be duly substantiated. A bar association existed, and in addition several legal organizations took up the defence of citizens before the courts.

21. The principle of the presumption of innocence was established by precise provisions of the Constitution and the Code of Criminal Procedure. However, the law contained no provision designed to consolidate that principle, and he acknowledged that the relevant legislation would have to be amended accordingly.

22. He outlined the conditions in which in camera proceedings could be ordered, as mentioned in paragraph 67 of the report (CCPR/C/81/Add.2).

In camera hearings were forbidden in a number of cases and, generally speaking, trials were public and hearings were reported in detail in the press and other media.

23. On the question of the independence of the judiciary, he said that, in conformity with the Constitution, judges and jurors were independent and subject only to the provisions of the law. He nevertheless admitted that the existing legislation must undergo far-reaching reform in order fully to guarantee that independence. Thus, the Status of Judges Act would soon be amended to provide for the establishment of a professional association to deal with all questions relating to the training and appointment of judges. As to jurors, he observed that Azerbaijan was one of the small number of former Soviet republics which had recently amended their Code of Criminal Procedure to incorporate a provision whereby the most serious offences would be tried by a jury. In 1993, however, in the light of the practical and other difficulties besetting the implementation of that provision, the National Assembly had suspended its application until such time as it took a specific decision on the question. He was confident, however, that after the war all the practical and financial difficulties would be resolved so as to permit the full application of the law.

24. There was no legislative provision for the dismissal of judges. In practice, dismissal had occurred only in exceptional circumstances. It could be ordered only by a board of inquiry. There were two such boards in Azerbaijan, one composed of local-court judges and the other composed of Supreme Court judges. A decision by the first board could be challenged before the Supreme Court board, which issued an opinion, and it was then for the National Assembly to reach a final decision. He assured the Committee that only professional criteria were taken into account in the decision and that no other factor, including political factors, carried any weight. Generally speaking, and in view of the fact that the Soviet legislation still in force did not fully guarantee the independence of the judiciary, new judges would have to be elected as soon as possible.

25. As to the implementation of article 11 of the Covenant, he said that no one could be imprisoned for debt in Azerbaijan. In the event of failure to fulfil a contractual obligation, criminal legislation provided for punishment only if non-fulfilment was deliberate, in other words, if there was manifest breach of trust for specific ends. A number of offences such as fraud were thus provided for in law.

26. In reply to a question about the Constitution, he said that the situation in that respect was complex since, first, the old Constitution was still in force, and secondly, a constitutional law on national independence had recently been adopted by referendum, in conformity with the Popular Referendum Act of 1991. Parliament had thus greatly modified the tenor of the Constitution, most of whose provisions had been brought into line with the international instruments to which Azerbaijan was a party. In addition, the President of the Republic had set up a commission to draft a new constitution. However, the adoption of a new constitution would require the prior holding of parliamentary elections. In that connection, he pointed out that the current Parliament had been elected in accordance with the Elections Act of 1990 and that new legislation on the question was under consideration.

27. As to the executive branch, members of the Committee had expressed surprise that the young Azerbaijani State was already under its second Government. That situation should, in his opinion, be attributed to the war and the internal tension that had shaken the Republic. Despite the difficulties, however, the authorities were taking care to continue to fulfil the obligations incumbent on them under the international instruments which had been ratified and to ensure observance of the provisions of national legislation.

28. A question had been asked about the publicity given to the Covenant in Azerbaijan and the measures taken to bring it to the attention of the general public. The text of the Covenant had been published in the Azerbaijani media, as had the announcement of the consideration of the initial report (CCPR/C/81/Add.2) by the Committee. When it returned to Azerbaijan, his delegation would submit to the authorities a report on the measures which appeared necessary in order to fulfil more thoroughly the obligations arising from the Covenant. In addition, the Committee's conclusions concerning its consideration of the initial report would be widely publicized in Azerbaijan. Many people had participated in the preparation of the report, notably jurists, specialists in international law and international relations, and representatives of various ministries and other organizations.

29. In reply to a question about the existence of NGOs in Azerbaijan, he said that there were a few; they concerned themselves mainly with the protection of the rights of children, the social rights of citizens and the implementation of the Helsinki agreements.

30. In reply to another question about the law on the state of emergency, he said that that law was fully consistent with the provisions of the Covenant; at present no region of Azerbaijan was under a state of emergency.

31. On the question of the right to self-determination, it should be borne in mind that many nationalities were present in Azerbaijan. Their numerical size was indicated in paragraph 7 of the core document (HRI/CORE/1/Add.41/Rev.1). His Government was particularly committed to the principle of self-determination, which must be exercised, as widely recognized in international law, with due respect for national unity and territorial integrity. Given the fact that the Armenian people had exercised self-determination in the context of the Republic of Armenia, there could be no justification for the Armenian minority living on Azerbaijani territory to enjoy more substantial rights than the other minorities in Azerbaijan. If that principle was called into question, the logical conclusion was that all countries should accord their minorities the right of self-determination and authorize them to establish a State on their territory. That having been said, on the question of the presidential decree on minorities, he agreed that a simple decree was not sufficient and that Parliament should enact legislation. Admittedly, the situation was changing slowly in that respect, but there had been some improvement and the new provisions were conducive to better guarantees of the rights of minorities.

32. Generally speaking, whenever the Azerbaijani authorities amended legislation, they were guided by a concern not to acquire a good image in international forums, but to enable the population of their country to lead

a better life. To achieve that goal, therefore, they were required to adopt laws that were consistent with the Covenant, a sine qua non for the achievement of a free and open society.

33. On the question of the reform of the judicial system, a new appeal procedure was to be instituted since the old system had been inherited from the Soviet regime and, henceforth, it would be possible to challenge judicial decisions democratically. Similarly, the courts were now fully independent, but there were still a whole range of legislative provisions that must be enacted in order to reform the system. All the old Soviet laws had nevertheless been amended or repealed, and the laws in force were consistent with the provisions of the Covenant and the international instruments to which Azerbaijan was a party and which applied throughout the country. The provisions of the Covenant could be invoked before the courts if equivalent provisions did not exist in domestic law. Judges were elected for a 10-year term.

34. The five Russians who had been sentenced to death had participated in fighting in Nagorny Karabakh, had blown up bridges and had killed Azerbaijani citizens. However, they had been extradited from the Russian Federation and were now free. The death penalty was imposed only very exceptionally and, in accordance with the Constitution, the President of the Republic could grant a reprieve to anyone under a death sentence.

35. As to the Procurator's Office, its functions were to be considerably modified and its powers curtailed, since that was an institution inherited from the old Soviet system, but many difficulties existed in that area. It was, in practice, planned to abolish it completely and transfer its powers to the Ministry of Justice. In addition, the Penal Code provided that the trial court must ensure that a fully competent interpreter was available to assist a defendant who did not know the language used in the proceedings. The Constitution did not provide for a prison establishment applying a special regime.

36. A law on military courts had been enacted in 1992. They were not special courts and existed in only seven regions of the country. They were courts of first instance whose decisions could be the subject of an appeal or application for judicial review. On the question of illegal armed groups, it should be noted that the Penal Code established penalties for any ill-treatment perpetrated by organized groups not subordinate to the Ministry of Defence.

37. It must unfortunately be confirmed that there were in Azerbaijan more than 1 million refugees living in extremely distressing conditions because of the climate and the lack of hygiene and medical care, particularly in the areas near the combat zones.

38. He thanked the members of the Committee for their attention and expressed the hope that he had answered their questions as well as possible.

39. The CHAIRMAN thanked Mr. Gadjiyev and all the other members of his delegation for having given the Committee a good description of the situation in Azerbaijan.

40. Mr. HERNDL requested clarification on the Constitution in force in Azerbaijan. He noted, from paragraph 30 of the core document (HRI/CORE/1/Add.41/Rev.1), that a new Constitution (Basic Law) was under preparation, but apparently the Constitutional Act mentioned in paragraph 6 of the initial report applied. He requested further information.

41. The delegation of Azerbaijan had recognized the need to effect substantive reforms; that required not only time but also resources which were not always easily available. However, it was to be hoped that the process of establishing the rule of law would continue and that provisions would be formulated in the light of the need to adopt a mechanism for implementation of the Covenant's provisions. Admittedly, the Government of Azerbaijan was currently experiencing difficulties because of the armed conflict in the country, but however serious the situation, it did not allow the country to override its international obligations. He hoped that Azerbaijan's next periodic report would contain a description of a judicial system consistent with the provisions of the Covenant and that a fruitful dialogue would take place with the Committee.

42. Mr. MAVROMMATIS thanked the delegation of Azerbaijan for replying to members' questions, a task which had not always been an easy one; for that reason, some questions had gone unanswered. For example, he had raised the complex problem of imprisonment for debt but had not received a satisfactory reply. The delegation might wish to refer to the summary records of the meetings and provide further information in its next periodic report.

43. He was not unaware of the difficulties that might be experienced by a country which had recently acceded to democracy and was moreover at war. But he considered that circumstances did not exempt the country from the obligation to take the necessary measures to protect certain rights and, in particular, to put an end to the systematic violations of the right to life constituted by arbitrary executions, and to hostage-taking, torture and other violations. He hoped that the continuation of the reforms already under way would ensure the protection of those rights and that the problems arising in Azerbaijan would be solved peacefully.

44. Mr. WENNERGREN said he had some difficulty in getting a clear idea of the situation in Azerbaijan since there were still many laws and institutions that had been inherited from the former Soviet regime. He nevertheless noted with satisfaction that positive measures had been taken and that others were planned, notably the adoption of a new constitution and electoral legislation which would enable democratic elections to be held. The country also seemed to be moving towards the establishment of the rule of law. He particularly welcomed, in that connection, the recent adoption of the Passports and Identity Cards Act and the proposed measures to abolish the Procurator's Office and establish a new democratic institution. He simply wished to draw the attention of the Azerbaijani Government to the provisions of article 14, paragraph 5, of the Covenant and to point out that an appeal against a decision of the Supreme Court did not constitute review "by a higher tribunal" within the meaning of the Covenant. He hoped that the country's legal system would in future conform more closely to the provisions of the Covenant.

45. Mr. DIMITRIJEVIC said he was reassured by the Azerbaijani delegation's replies to the questions asked by members of the Committee. The replies showed a good understanding of the situation of the country and indicated that the Government was firmly resolved to deal with the problems with which it was confronted.

46. He was nevertheless concerned about the evasive character of some of Mr. Gadjiyev's replies: he had said on several occasions that his Government had no information about matters referred to by members or that those matters had been misreported. On the particular questions of hostage taking and attempts to impose censorship, he considered that the Government had a duty to inquire into the cases brought to its attention. However, he shared Mr. Gadjiyev's optimism about the improvement in the situation in Azerbaijan.

47. Mrs. CHANET said that she had found the Azerbaijani delegation's replies to be more candid and better substantiated than the information presented in the report (CCPR/C/81/Add.2). She particularly welcomed the fact that the delegation seemed aware of the need to carry out a far-reaching reform of the country's judicial system. She also noted with satisfaction that the law on freedom of movement had recently been amended, but regretted that the Committee had not been able to see the new text. The delegation's explanations had enabled members to gain a better understanding of the situation in Azerbaijan, a young republic in transition torn by an interminable conflict and confronted with serious difficulties inherited from the past. The Government must not, however, use those difficulties as a pretext for not investigating certain acts: summary executions, taking of hostages, torture, etc. In that connection, she was concerned at the Government's statement that it knew nothing about the cases of torture she had mentioned.

48. On the question of the right to freedom of information, it was apparent that the laws inherited from the former regime did not seem to have been amended and, consequently, the rights set out in article 19 of the Covenant were not fully guaranteed.

49. With regard to the plurality of political parties, the possibility, for the Ministry of Justice, to refuse to register a party or association appeared to impede the rights guaranteed by article 25 of the Covenant.

50. She hoped all necessary measures would be taken to ensure that the political parties could pursue their activities unhindered and that free elections could be held in Azerbaijan. She also hoped that the State party's next report would give a clearer picture of the situation in Azerbaijan, particularly with regard to the Covenant.

51. Mr. FRANCIS noted that the report submitted by the delegation of Azerbaijan (CCPR/C/81/Add.2) was not consistent with the Committee's guidelines concerning the form and content of reports (CCPR/C/20/Rev.1). He hoped that the Government of Azerbaijan would take account of the Committee's recommendations when submitting future periodic reports. Azerbaijan's initial report should be regarded as the first step in an ongoing process; the dialogue initiated between the Government and the Committee must be continued.

52. Mr. POCAR considered that due emphasis should be placed on the goodwill which the members of the Azerbaijani delegation had displayed in answering the Committee's questions.

53. Clearly, much remained to be done in order to improve the situation in Azerbaijan, and the reform of current legislation, much of which had been inherited from the previous regime, would take some time.

54. He welcomed the attitude of Mr. Gadjiyev, who had said that the whole of the country's legislation needed to be revised, not in order to satisfy the Committee but in the interests of the Azerbaijanis themselves.

55. Lastly, he recommended that the Azerbaijani Government should accede to the Optional Protocol, which supplemented the system of protection established by the Covenant.

56. Mr. PRADO VALLEJO said that the members of the Committee were aware of the obstacles encountered by the Government of Azerbaijan as it progressed towards democracy. He hoped that the next report would shed light on a number of points which were still obscure. In his view, the Government should make an effort to increase awareness of the Covenant in Azerbaijan and inform the public of the rights enunciated in it. It was essential that the right of appeal should be guaranteed, especially with regard to the death penalty.

57. The Government should not hesitate to investigate any human rights violations reported to it. It was its duty to identify and punish the perpetrators of such violations.

58. He hoped that the consideration of Azerbaijan's next report would take place in the same spirit of cooperation.

59. The CHAIRMAN thanked the delegation of Azerbaijan for having submitted the report (CCPR/C/81/Add.2) within the time-limit set for that purpose, and expressed gratitude to the Government for its complete willingness to engage in a dialogue with the Committee. Many problems remained to be solved before the provisions of the Covenant could be fully implemented. With regard to treaties concerning human rights or humanitarian law, it was considered that they were automatically renewed in the event of succession. He welcomed the Azerbaijani Government's undertaking to implement the provisions of the International Covenant on Civil and Political Rights. Numerous problems remained, mainly because of the burden inherited from the previous regime and the conflict between Azerbaijan and Armenia. Those difficulties must not, however, prevent the Government from doing everything possible to improve the situation in Azerbaijan. The dialogue initiated between the Government and the Committee would be of value only if it led to the implementation of constructive recommendations. He hoped that the next periodic report would reflect a distinct improvement in the situation in Azerbaijan and full implementation of the Covenant's provisions.

60. Mr. GADJIYEV (Azerbaijan) thanked members of the Committee for their patience and the interest they had taken in the problems facing his Government. His delegation had learnt a lot from the members of the Committee, although the meeting had been brief, and hoped that the dialogue

which had been initiated on the occasion of the consideration of Azerbaijan's initial report could be continued. The situation in Azerbaijan was admittedly difficult, but the Government would spare no effort to promote the democratization of all the country's institutions. A return to a totalitarian regime was inconceivable and he hoped that the war in his country would end quickly. Azerbaijan had been one of the first republics of the former USSR to set out along the path to democratization, and it was his wish that Azerbaijani society would be based on the law and not on arbitrary power.

61. The CHAIRMAN told the delegation that it would be informed in due course of the time-limit for submission of the next report.

The meeting rose at 5.55 p.m.